

SENATE BILL 181

P4

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CF 11r0147

By: **The President (By Request – Administration)**

Introduced and read first time: January 24, 2011

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Collective Bargaining – Independent Home Care Providers**

3 FOR the purpose of establishing collective bargaining rights for certain independent
4 home care providers; providing that there may be only one appropriate
5 bargaining unit for certain independent home care providers; authorizing
6 providers to designate an exclusive representative; requiring that certain
7 procedures relating to the election and certification of an exclusive
8 representative, collective bargaining process, and bargaining agreements be
9 governed by certain provisions of the collective bargaining law for State
10 employees; prohibiting the State Labor Relations Board from conducting a
11 certain election within a certain period; requiring an exclusive representative to
12 represent all independent home care providers, whether or not they are
13 members of the provider organization; providing for the scope of collective
14 bargaining for independent home care providers; authorizing collective
15 bargaining negotiations pertaining to independent home care providers to
16 include, under certain circumstances, negotiations relating to the right of an
17 employee organization to receive service fees from nonmembers; providing that
18 certain independent home care providers are not required to pay certain fees
19 and are required to make certain other payments; specifying that the
20 certification of certain exclusive representatives under this Act does not prevent
21 provider organizations or other persons from communicating with or appearing
22 before or making proposals to certain State agencies at a public meeting or
23 hearing; prohibiting a provider organization from calling or directing a strike;
24 providing that the provisions of this Act may not alter certain rights of home
25 care consumers with regard to independent home care providers; declaring the
26 intent of the General Assembly as it relates to the application of a certain
27 exemption to State and federal antitrust laws; providing for the application and
28 construction of this Act; providing that a certain provider organization certified
29 as the majority representative in a certain election pursuant to a certain
30 Executive Order shall continue as the exclusive representative without the
31 requirement of an additional election and certification; defining certain terms;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 declaring that the provisions of this Act are severable; and generally relating to
2 collective bargaining for independent home care providers.

3 BY adding to
4 Article – Health – General
5 Section 15–901 through 15–907 to be under the new subtitle “Subtitle 9.
6 Collective Bargaining by Independent Home Care Providers”
7 Annotated Code of Maryland
8 (2009 Replacement Volume and 2010 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article – Health – General**

12 **SUBTITLE 9. COLLECTIVE BARGAINING BY INDEPENDENT HOME CARE**
13 **PROVIDERS.**

14 **15–901.**

15 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.

17 (B) “INDEPENDENT HOME CARE PROVIDER” MEANS AN INDIVIDUAL
18 WHO:

19 (1) PROVIDES HOME CARE SERVICES THAT ARE REIMBURSED
20 UNDER:

21 (i) THE MEDICAID WAIVER FOR OLDER ADULTS THAT IS
22 JOINTLY ADMINISTERED BY THE DEPARTMENT AND THE DEPARTMENT OF
23 AGING AS ESTABLISHED UNDER § 15–132 OF THIS TITLE;

24 (ii) THE MEDICAID PERSONAL CARE PROGRAM UNDER
25 THE STATE MEDICAL ASSISTANCE PROGRAM;

26 (iii) THE LIVING AT HOME WAIVER PROGRAM UNDER
27 SUBTITLE 8 OF THIS TITLE; AND

28 (iv) THE IN–HOME AIDE SERVICE PROGRAM
29 ADMINISTERED BY THE DEPARTMENT OF HUMAN RESOURCES; AND

30 (2) IS NOT EMPLOYED BY A PRIVATE AGENCY THAT EMPLOYS
31 HOME CARE PROVIDERS.

1 (C) "PROVIDER ORGANIZATION" MEANS AN ORGANIZATION THAT:

2 (1) INCLUDES INDEPENDENT HOME CARE PROVIDERS; AND

3 (2) HAS AS ONE OF ITS PURPOSES THE REPRESENTATION OF
4 INDEPENDENT HOME CARE PROVIDERS IN THEIR RELATIONS WITH THE STATE.

5 15-902.

6 IN ACCORDING INDEPENDENT HOME CARE PROVIDERS AND THEIR
7 REPRESENTATIVES RIGHTS UNDER THIS SUBTITLE, IT IS THE INTENT OF THE
8 GENERAL ASSEMBLY THAT THE STATE ACTION EXEMPTION TO THE
9 APPLICATION OF FEDERAL AND STATE ANTITRUST LAWS BE FULLY AVAILABLE
10 TO THE EXTENT THAT THE ACTIVITIES OF THE INDEPENDENT HOME CARE
11 PROVIDERS AND THEIR REPRESENTATIVES ARE AUTHORIZED UNDER THIS
12 TITLE.

13 15-903.

14 (A) THERE SHALL BE ONLY ONE APPROPRIATE BARGAINING UNIT OF
15 INDEPENDENT HOME CARE PROVIDERS IN THE STATE.

16 (B) INDEPENDENT HOME CARE PROVIDERS MAY DESIGNATE, IN
17 ACCORDANCE WITH THE PROVISIONS OF THIS SUBTITLE, WHICH PROVIDER
18 ORGANIZATION, IF ANY, SHALL BE THE EXCLUSIVE REPRESENTATIVE OF ALL
19 INDEPENDENT HOME CARE PROVIDERS IN THE STATE.

20 (C) (1) THE ELECTION AND CERTIFICATION OF THE EXCLUSIVE
21 REPRESENTATIVE OF INDEPENDENT HOME CARE PROVIDERS SHALL BE
22 GOVERNED BY THE PROCEDURES SET FORTH IN TITLE 3, SUBTITLE 4 OF THE
23 STATE PERSONNEL AND PENSIONS ARTICLE.

24 (2) ALL ELECTIONS SHALL BE CONDUCTED BY THE STATE LABOR
25 RELATIONS BOARD AND SUBJECT TO THE REQUIREMENTS AND LIMITATIONS OF
26 TITLE 3, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

27 (3) THE STATE LABOR RELATIONS BOARD MAY NOT CONDUCT
28 AN ELECTION FOR AN EXCLUSIVE REPRESENTATIVE IF AN ELECTION OR
29 CERTIFICATION OF AN EXCLUSIVE REPRESENTATIVE HAS TAKEN PLACE WITHIN
30 THE PRECEDING 2 YEARS.

31 (4) A PROVIDER ORGANIZATION DESIGNATED AS THE EXCLUSIVE
32 REPRESENTATIVE SHALL REPRESENT ALL INDEPENDENT HOME CARE
33 PROVIDERS IN THE STATE FAIRLY AND WITHOUT DISCRIMINATION, WHETHER

1 OR NOT THE INDEPENDENT HOME CARE PROVIDERS ARE MEMBERS OF THE
2 PROVIDER ORGANIZATION.

3 **15-904.**

4 (A) THE DEPARTMENT AND THE DEPARTMENTS OF HUMAN
5 RESOURCES AND AGING SHALL DESIGNATE APPROPRIATE REPRESENTATIVES
6 TO PARTICIPATE IN COLLECTIVE BARGAINING WITH THE PROVIDER
7 ORGANIZATION CERTIFIED AS THE EXCLUSIVE REPRESENTATIVE OF
8 INDEPENDENT HOME CARE PROVIDERS.

9 (B) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, THE PARTIES
10 SHALL ADHERE TO THE BARGAINING PROCESS SET FORTH IN § 3-501 OF THE
11 STATE PERSONNEL AND PENSIONS ARTICLE.

12 (C) THE STATE AGENCIES SPECIFIED IN SUBSECTION (A) OF THIS
13 SECTION THAT ARE ENGAGED IN BARGAINING SHALL NEGOTIATE, IN
14 CONSULTATION WITH THE DEPARTMENT OF BUDGET AND MANAGEMENT, ALL
15 MATTERS THAT REQUIRE APPROPRIATION OF STATE FUNDS.

16 (D) COLLECTIVE BARGAINING SHALL INCLUDE ALL MATTERS RELATING
17 TO THE TERMS AND CONDITIONS OF PARTICIPATION BY INDEPENDENT HOME
18 CARE PROVIDERS IN THE PROVISION OF HOME CARE SERVICES UNDER THE
19 PROGRAMS SPECIFIED IN § 15-901(B) OF THIS SUBTITLE, INCLUDING:

20 (1) REIMBURSEMENT RATES;

21 (2) BENEFITS;

22 (3) PAYMENT PROCEDURES;

23 (4) CONTRACT GRIEVANCE PROCEDURES;

24 (5) TRAINING;

25 (6) MEMBER DUES DEDUCTIONS; AND

26 (7) OTHER TERMS AND CONDITIONS OF PARTICIPATION BY
27 INDEPENDENT HOME CARE PROVIDERS IN THE PROVISION OF HOME CARE
28 SERVICES UNDER THE PROGRAMS SPECIFIED IN § 15-901(B) OF THIS SUBTITLE.

29 (E) (1) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,
30 COLLECTIVE BARGAINING MAY INCLUDE NEGOTIATIONS RELATING TO THE

1 RIGHT OF A PROVIDER ORGANIZATION THAT IS THE EXCLUSIVE
2 REPRESENTATIVE TO RECEIVE SERVICE FEES FROM NONMEMBERS.

3 (II) THE REPRESENTATIVES OF THE STATE MAY NOT REACH
4 AN AGREEMENT CONTAINING A SERVICE FEE PROVISION UNLESS THE
5 REPRESENTATIVES OF THE STATE CONCLUDE THAT THE AGREEMENT AS A
6 WHOLE WILL NOT ADVERSELY IMPACT NONMEMBER PROVIDERS.

7 (2) AN INDEPENDENT HOME CARE PROVIDER WHOSE RELIGIOUS
8 BELIEFS ARE OPPOSED TO JOINING OR FINANCIALLY SUPPORTING ANY
9 COLLECTIVE BARGAINING ORGANIZATION:

10 (I) IS NOT REQUIRED TO PAY A SERVICE FEE; BUT

11 (II) SHALL PAY AN AMOUNT OF MONEY AS DETERMINED IN
12 COLLECTIVE BARGAINING NEGOTIATIONS, NOT TO EXCEED ANY SERVICE FEE
13 NEGOTIATED UNDER PARAGRAPH (1) OF THIS SUBSECTION, TO ANY
14 CHARITABLE ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C)(3) OF
15 THE INTERNAL REVENUE CODE AND TO FURNISH TO THE STATE AGENCIES
16 ENGAGED IN COLLECTIVE BARGAINING UNDER THIS SUBTITLE AND THE
17 EXCLUSIVE REPRESENTATIVE WRITTEN PROOF OF THE PAYMENT.

18 (F) NOTWITHSTANDING SUBSECTION (D) OF THIS SECTION, THE
19 REPRESENTATIVES OF THE STATE:

20 (1) MAY NOT BE REQUIRED TO NEGOTIATE ANY MATTER THAT IS
21 INCONSISTENT WITH APPLICABLE LAW; AND

22 (2) MAY NEGOTIATE AND REACH AGREEMENT WITH REGARD TO
23 ANY MATTER THAT IS INCONSISTENT WITH APPLICABLE LAW ONLY IF IT IS
24 UNDERSTOOD THAT THE AGREEMENT WITH RESPECT TO THE MATTER CANNOT
25 BECOME EFFECTIVE UNLESS THE APPLICABLE LAW IS AMENDED BY THE
26 GENERAL ASSEMBLY IN A MANNER THAT ELIMINATES INCONSISTENCY.

27 (G) THE PARTIES SHALL REDUCE THEIR AGREEMENT TO A
28 MEMORANDUM OF UNDERSTANDING THAT COMPLIES WITH THE PROVISIONS OF
29 § 3-601 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

30 15-905.

31 THE CERTIFICATION OF AN EXCLUSIVE REPRESENTATIVE OF
32 INDEPENDENT HOME CARE PROVIDERS BY THE STATE AGENCIES ENGAGED IN
33 COLLECTIVE BARGAINING UNDER THIS SUBTITLE DOES NOT PREVENT THE
34 CERTIFIED PROVIDER ORGANIZATION OR ANY OTHER ORGANIZATION OR

1 INDIVIDUAL FROM COMMUNICATING WITH ANY STATE OFFICIAL ON MATTERS
2 OF INTEREST, INCLUDING APPEARING BEFORE OR MAKING PROPOSALS TO THE
3 STATE AGENCIES ENGAGED IN COLLECTIVE BARGAINING AT A PUBLIC MEETING
4 OR HEARING OR AT ANY OTHER FORUM OF THE STATE AGENCIES.

5 **15-906.**

6 (A) A PROVIDER ORGANIZATION MAY NOT CALL OR DIRECT A STRIKE OR
7 OTHER COLLECTIVE CESSATION OF THE DELIVERY OF SERVICES.

8 (B) THIS SUBTITLE MAY NOT BE CONSTRUED TO GRANT ANY RIGHT, OR
9 IMPLY THAT INDEPENDENT HOME CARE PROVIDERS HAVE ANY RIGHT, TO
10 ENGAGE IN A STRIKE OR OTHER COLLECTIVE CESSATION OF THE DELIVERY OF
11 SERVICES.

12 **15-907.**

13 (A) THIS SUBTITLE MAY NOT BE CONSTRUED TO MAKE INDEPENDENT
14 HOME CARE PROVIDERS EMPLOYEES OF THE STATE.

15 (B) THIS SUBTITLE MAY NOT BE CONSTRUED IN ANY WAY TO DENY
16 PROGRAM RECIPIENTS OF INDEPENDENT HOME CARE SERVICES THE RIGHT TO
17 SELECT, DIRECT, AND TERMINATE THE SERVICES OF INDEPENDENT HOME CARE
18 PROVIDERS.

19 SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding the
20 provisions of § 15-903 of the Health – General Article as enacted by Section 1 of this
21 Act, the provider organization certified as the majority representative of independent
22 home care providers in the election held pursuant to Executive Order 01.01.2007.15
23 prior to the effective date of this Act shall continue as the exclusive representative
24 without the requirement of an additional election and certification.

25 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
26 Act or the application thereof to any person or circumstance is held invalid for any
27 reason in a court of competent jurisdiction, the invalidity does not affect other
28 provisions or any other application of this Act which can be given effect without the
29 invalid provision or application, and for this purpose the provisions of this Act are
30 declared severable.

31 SECTION 4. AND BE IT FURTHER ENACTED, That:

32 (a) On or before December 31 of each year through 2014, the Department of
33 Health and Mental Hygiene shall report to the Senate Finance Committee and the
34 House Economic Matters Committee, in accordance with § 2-1246 of the State
35 Government Article, on the status of the independent home care providers

1 participating in the programs specified in § 15–901(b) of the Health – General Article
2 as enacted by Section 1 of this Act.

3 (b) The report shall include:

4 (1) the number of independent home care providers participating in
5 the programs and the number of consumers served by the programs;

6 (2) the number of independent home care providers who join the
7 collective bargaining unit established under this Act and the number of consumers
8 served by each of the providers; and

9 (3) an analysis of any positive or negative trends resulting from the
10 implementation of this Act.

11 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 July 1, 2011.